

Commercial Motor Vehicle

Enforcement Quarterly



Captain's Corner

Captain Robert R. Powers, Jr.

Welcome to the new year, 2006 promises to be as busy as ever in the world of commercial motor vehicle safety and security.

In December 2005, I spent three days meeting with officials from the Transportation Security Administration, Federal Law Enforcement Training Center, International Association of Chiefs of Police, Commercial Vehicle Safety Alliance, National Sheriff's Association, and the American Association of Motor Vehicle Administrators to develop a training curriculum for law enforcement officers in commercial motor vehicle security awareness. This training opportunity will be available to all law enforcement officers nationwide later this year. The curriculum is still under development so the exact duration and subject matter has not been finalized. Look for details on this training opportunity in a future edition of the Commercial Motor Vehicle Enforcement Quarterly, or from the Michigan Association of Chiefs of Police and the Michigan Sheriffs' Association.

I am pleased to report that the 20 newest motor carrier officers who graduated from the 15th Motor Carrier Recruit School last November are in the field and progressing well through the Field Officers Training (FTO) Program. In the last issue of this newsletter I reported that the State Police Motor Carrier Division is planning to begin another recruit school on October 8, 2006. While the 16th Motor Carrier Recruit School is still a go, we have moved the start date up two weeks to September 24, 2006. We are still seeking qualified men and women who may be interested in a career in commercial motor vehicle enforcement. Interested applicants should contact Sgt. Peggy Hines at 517/336-6284.

The January 6th deadline for submitting nominations for the Michigan Association of Chiefs of Police Award for Excellence in Commercial Vehicle Safety has passed. I am excited that we received 16 nominations this year, a new high. Winners will be announced and recognized on February 9, 2006 at the MACP Mid-Winter Conference, and reported in the April edition of this newsletter.

In closing I want to wish you all a safe and successful 2006.

January 2006

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Size and Weight - Act 420 of 2004

Act 420 of 2004 took effect January 1, 2006. Because of the length of time between the passage of the statute and the implementation, the January 2005 CMV Enforcement Quarterly article on the statute is repeated here, with an expanded discussion on how to calculate the fines for a "misload" citation.

The changes are as follows:

Length for Double Trailers

A new provision for double trailers was added at Section 257.719(2)(g). A truck tractor and two semitrailers (or a semitrailer and trailer) on a normal route (non-designated route) is allowed an overall length (all vehicles in the combination) of 65', if the following provisions are met:

- Each trailer or semitrailer cannot exceed 28 1/2' each.
- The vehicle must be used for a business purpose reasonably related to picking up or delivering a load.
- Each trailer or semitrailer must be a dump trailer (mechanical or gravity) for construction materials.

If all of the above provisions are not met, then the vehicle does not qualify for the 65' and is only allowed the 59' overall length provided for in subsection (2)(f).

Federal Length and Width Exemptions

Section 257.719(9)(b) was amended to adopt Section 658.16 and Appendix D to Part 658 of Title 23 CFR by reference. These provisions of Title 23 specify certain safety and energy conservation devices that are exempt from measurement for length and width. Section 658.16 and Appendix D are included with this newsletter.

"Misload" Fines

Although the term is not specifically defined, "misload" weight citations have a new fine schedule. Section 257.724 has been amended to provide for a set fine if the court finds "...that the motor vehicle or combination of vehicles would be lawful by a proper distribution of the load upon all the axles of the vehicle or combination of vehicles..." The fine is to be \$200 per axle, with a limit of 3 axles, for a maximum "misload" fine of \$600.

However, if any one axle in the combination is more than 4,000 lbs. overweight, the cents-per-pound schedule in subsection (3) is to be applied. Vehicles that are "overgross" (would not be lawful by a proper distribution if all the axles) are also fined according to subsection (3).

Vehicles that are operating on an overweight permit or are operating on a Special Designated Highway (Bridge Formula) are not eligible for the misload fine provision.

Example #1

A five axle vehicle is issued an axle weight citation. The vehicle is not overgross, and is not on a Special Designated Highway (Bridge Formula) or operating on a permit. Four of the five axles are over by: 3,000 lbs., 2,500 lbs., 1,500 lbs., and 2,000 lbs. This vehicle would receive a maximum \$600 fine, calculated as follows: no one axle is more than 4,000 lbs. overweight, so each axle is fined \$200, with a maximum of 3 axles fined, per the language in Section 257.724(4)(b):

"(b) If the court determines that the motor vehicle or the combination of vehicles would be lawful by a proper distribution of the load upon all of the axles of the vehicle or the combination of vehicles, but that 1 or more axles of the vehicle exceeded the maximum allowable axle weight by 4,000 pounds or less, the court shall impose a misload fine of \$200 per axle. Not more than 3 axles shall be used in calculating the fine to be imposed under this subdivision. This subdivision does not apply to a vehicle subject to the maximum loading provisions of section 722(11) or to a vehicle found to be in violation of a special permit issued under section 725." (Emphasis added).

Example #2

The same five axle vehicle is issued an axle weight citation. Again, the vehicle is not overgross, and is not on a Special Designated Highway (Bridge Formula) or operating on a permit. Four of the five axles are over by: 4,500 lbs., 2,500 lbs., 1,500 lbs., and 2,000 lbs. Note that only one axle has changed - the first axle is now more than 4,000 lbs. over. In this scenario, the vehicle would be charged by the cents-per-pound fine structure provided for in Section 257.724(3). This is because of the language in Section 257.724(4)(c):

"(c) If the court determines that the motor vehicle or the combination of vehicles would be lawful by a proper distribution of the load upon all of the axles of the vehicle or the combination of vehicles, but that 1 or more axles of the vehicle exceeded the maximum allowable axle weight by more than 4,000 pounds, the court shall impose a fine for the violation according to the schedule provided in subsection (3)." (Emphasis added.)

Lift Axles

Section 257.724a has been added to the Michigan Vehicle Code. Subsection (1) exempts a vehicle equipped with lift axles from all weight laws during the period that the axles are raised to negotiate an intersection, driveway, or other turn, and until the lift axles are fully engaged after the time necessary to negotiate the turn. In addition, subsection (2) requires that prior to weighing a vehicle equipped with air axles that have been raised to negotiate a turn, the officer shall allow the lift axles to be lowered and placed under full operational pressure.

Inspections - Seat Belts

Section 257.710e of Act 300 requires drivers and front seat passengers to wear a seat belt. It also contains some exemptions from the requirement that may apply to commercial vehicle operators:

- (1)(b) A Bus.
- (1)(e) A motor vehicle if the driver or passenger possesses a written verification from a physician that the driver or passenger is unable to wear a safety belt for physical or medical reasons.
- (1)(g) A commercial or United States postal service vehicle that makes frequent stops for the purpose of pickup or delivery of goods or services.
- (1)(h) A motor vehicle operated by a rural carrier of the United States postal service while serving his or her rural postal route.

Section 392.16 of the Federal Motor Carrier Safety Regulations (FMCSR), as adopted by Act 181 (PA 1963), requires all commercial motor vehicle drivers to wear a seat belt, if a seat belt assembly is required (Section 393.93 requires some type of seat belt assembly in all commercial motor vehicles, including buses, built since January 1, 1965).

Section 392.16 does not contain any of the exemptions provided for in Section 257.710e. As with the differing cargo securement provisions discussed in the next article, it is very important for transporters, law enforcement and the courts to understand that the exemptions of Section 257.710e only applies to Section 257.710e. It does not extend to other acts of law, such as the Michigan Motor Carrier Safety Act (Act 181 PA 1963).

If a vehicle is subject to Act 181 (e.g., over 10,000 lbs. gross combination weight), then the seat belt regulations of the FMCSR apply, regardless of the exception in Section 257.710e.

Vehicle Code - 257.720 - Agricultural Provisions

Michigan has two separate statutes regarding the securement of cargo - Section 257.720 of the Motor Vehicle Code (Act 300 PA 1949), and Part 393 of the Federal Motor Carrier Safety Regulations, as adopted by the Michigan Motor Carrier Safety Act (Act 181 PA 1963). The provisions of the two statutes are very similar except for a couple of circumstances, some of which we will discuss here.

However, it is very important for transporters, law enforcement and the courts to understand that the exception to Section 257.720 for agricultural operations only applies to Section 257.720. It does not extend to other acts of law, such as the

Michigan Motor Carrier Safety Act (Act 181 PA 1963). If a vehicle is subject to Act 181 (e.g., over 10,000 lbs. gross combination weight), then the cargo securement regulations of the FMCSR apply, regardless of the exception in Section 257.720.

Generally speaking, the cargo securement provisions of Act 181/FMCSR should be applied to vehicles subject to Act 181/FMCSR, whether in intrastate or interstate commerce. Section 257.720 should be applied to vehicles not subject to Act 181/FMCSR. So officers have a thorough understanding of the differences in the two acts of law, this discussion covers Section 257.720, particularly in regards to agricultural operations.

Spilling Load Exceptions

Subsection 257.720(1) requires a vehicle to be constructed or loaded to prevent cargo from coming off the vehicle. However, "this requirement does not apply to a vehicle transporting agricultural or horticultural products when hay, straw, silage, or residue from a product, but not including the product itself, or when materials such as water used to preserve and handle agricultural or horticultural products while in transportation, escape from the vehicle in an amount that does not interfere with other traffic on the highway."

Note that this exception applies to both for-hire transporters and farm operations (e.g., "a vehicle"), regardless of the type of license plate displayed (farm vs. commercial).

Tarping Exceptions

Subsection (3) of Section 257.720 requires a tarp on all loads other than logs or tubular products, or to have the load securely fastened to prevent dropping or shifting of the load. This differs from the cargo securement requirements of the FMCSR, adopted by Act 181, which does not require loads to be tarped necessarily, but does require positive means of securement for all freight.

This difference in the two statutes led to confusion regarding the securement of sod by tarp and bungee cords, which is not sufficient securement under the FMCSR/Act 181.

Subsection (6) of Section 257.720 also provides an agricultural/horticultural exception to the tarping requirement of subsection (3), provided the vehicle does not spill:

"(6) Subsection (3) does not apply to a person operating a vehicle to transport agricultural commodities or to a person operating a farm truck or implement of husbandry transporting sand, gravel, and dirt necessary in the normal operation

of a farm. However, a person operating a vehicle to transport agricultural commodities or sand, gravel, and dirt in the normal operation of the farm who violates subsection (1) or (4) is guilty of a misdemeanor and is subject to the penalties prescribed in subsection (10)."

Again, note that this exception applies to both for-hire transporters and farm operations (e.g., "a vehicle"), regardless of the type of license plate displayed (farm vs. commercial).

This statutory language was the impetus for the adage, "Farm operations don't have to tarp, but can't spill."

A second exemption from the tarping requirement is found in Subsection (8) for vehicles and other equipment engaged in work upon the surface of a highway or street in a designated work area. "Designated work area" does not include travel to and from the work area.

A third exemption from the tarping requirement, Subsection (7) states that tarping is not required on a motor vehicle transporting items of a load which because of their weight will not fall off the moving vehicle and which have their centers of gravity located at least 6 inches below the top of the enclosure. Also, tarping is not required on a motor vehicle carrying metal which because of its weight and density is so loaded as to prevent it from dropping or falling off the moving vehicle.

Responsibility

Subsection (4) of Section 257.720 specifies that a company or individual who loads or unloads a vehicle, or causes it to be loaded or unloaded, with the knowledge that it is to be driven on a public highway, can be charged with a violation of this section, even if the company or individual does not actually operate the vehicle.

Definition

Per Subsection (9), the term "agricultural commodities" means that term as defined in Section 257.722. Section 257.722(12) states:

"(12) As used in this section, "agricultural commodities" means those plants and animals useful to human beings produced by agriculture and includes, but is not limited to, forages and sod crops, grains and feed crops, field crops, dairy and dairy products, poultry and poultry products, cervidae, livestock, including breeding and grazing, equine, fish, and other aquacultural products, bees and bee products, berries, herbs, fruits, vegetables, flowers, seeds, grasses, nursery stock, mushrooms, fertilizer, livestock bedding, farming equipment, and fuel for agricultural use. The term "agricultural commodities" shall not include trees and lumber."

REMINDER BOX

◆ MPSC has requested that enforcement of the 2006 MPSC decals be delayed until January 30, 2006.

◆ The International Fuel Tax Agreement (IFTA) Articles of Agreement require member jurisdictions to provide a two-month grace period for the issuance of the new year fuel tax permits. Enforcement of fuel tax permits is delayed until March 1, 2006.

◆ Officers should also check LEIN for announcements on extensions of IRP plates. Many states extend the expiration date for commercial vehicles registration plates until new credentials can be issued.

◆ Michigan uses colored paper stock for the printing of IRP cab cards. The paper matches with the color of the tab for a particular year. For example, the 2005 registration year tabs and cab cards are grey. The 2006 registration year tabs and cab cards are yellow.

